



# Memorandum

**To:** Mayor and City Council

**From:** Councilmember Pete Constant

**Subject:** SEE BELOW

**Date:** April 17, 2009

**Approved:**

**SUBJECT: PROPOSED MODIFICATIONS TO THE PRIVATE PROPERTY TREE  
REMOVAL PERMIT PROCESS TO IMPROVE EFFICIENCY AND ACHIEVE  
COST RECOVERY**

**Recommendation**

In response to staff's request for direction, I recommend that the City Council direct staff to return to Council with an analysis of the following changes to their proposal for modifying the private property tree removal permit process:

1. Provide residents with the option of performing or identifying reasonable mitigation in lieu of a permit.
2. Set a reasonable cap on the permit cost.
3. Allow for removal of nuisance trees without a permit.
4. Not require an arborist report to remove a tree from private property.

**Background**

The positive benefits of the City's goal to promote the urban forest, as outlined in Title 13 of the San José Municipal Code, must be balanced by the recognition of an individual's right to enjoy their private property free from unreasonable restriction. A residential property owner should have the ability to remove any tree from their backyard in order to improve their property, for example by installing a pool or solar panels, without having to go through an overly burdensome and costly permitting process.

The proposed modifications to the private property tree removal process do not strike this delicate balance and therefore should be amended in the following ways:

1. Mitigation for the removal of ordinance size trees should be easily defined and flexible enough to allow property owners multiple options. For example, a property owner who wishes to remove a tree from their property should be allowed to plant trees on the same property or make a donation to Our City Forest to cover the cost of purchasing trees to be planted elsewhere. In another instance one neighbor planting trees in their backyard should

be considered a reasonable mitigation for another neighbor removing trees from their backyard.

2. The City's dire budget situation has made it necessary to set permit fees to ensure cost recovery for the staff time required by the process. However, these dire economic times also require us to limit city process and permitting fees so that they are reasonable and affordable to property owners. Otherwise, we run the risk of limiting property owners' abilities to comply with our policies. Any tree removal permit that might cost a homeowner in excess of \$1,000 contains too much city process and is likely to cause homeowners to illegally remove trees, which is counter to the intent of Title 13.
3. It is well documented that there are certain species of trees that pose a nuisance to property owners. For example, the city has received thousands of complaints and requests to remove tulip trees and liquid amber trees. Furthermore, many species of pine and palm trees have a limited useful life span. Trees in these categories should not require a permit for removal.
4. Requiring an arborist report, or the equivalent staff review, for removal of a tree on private property is an unnecessarily burdensome requirement. No matter whether a tree is healthy or not, a property owner should have the right to remove it from their property as long as a reasonable mitigation (as described in recommendation 1) is identified.